S.B.CIVIL WRIT PETITION NO.123/1994

Gulab Ram
v.
State of Rajasthan & Anr.

Date of Order :: 4th July, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The petitioner, an Inspector, Land Records, was denied promotion to the post of Naib Tehsildar under the Rajasthan Tehsildars Service Rules, 1956 on the count that he suffered a minor penalty i.e. of censure.

While giving challenge to the decision aforesaid the contention of counsel for the petitioner is that such a minor penalty cannot be a reason to deny promotion to next higher post where criteria for such promotion is seniority-cum-merit.

Per contra, it is stated on behalf of the respondents that candidature of the petitioner was objectively considered by the Departmental Promotion Committee for the purpose of promotion as Naib Tehsildar but in view of the fact that he suffered a minor penalty of censure he was not found suitable to be promoted as Naib Tehsildar and this fact was

communicated to him by the Registrar, Board of Revenue, Rajasthan, Ajmer under an order dated 21.12.1993 (Anx.P/7).

It is not at all disputed by the respondents that the criteria for promotion was seniority-cum-merit. From the averments contained in pleadings of the case it is apparent that candidature of the petitioner though was considered by the Departmental Promotion Committee for promotion under the criteria of seniority-cum-merit but the promotion was denied to him solely on basis of minor penalty i.e. of censure inflicted upon him by the competent authority.

A penalty imposed upon a civil servant can very well be taken into consideration while considering his candidature for the purpose of promotion, however, while doing so the Departmental Promotion Committee should consider effect of such penalty on the promotion concerned. This Court in the case of Satyamani Tiwari v. State of Rajasthan (SBCivil Writ Petition No.2878/2003), decided on 11.8.2006, while considering the issue involved in this petition for writ held as under:-

> "While examining suitability of an incumbent various factors are required to be taken into consideration and imposition of a minor penalty cannot be a sole criteria for denying promotion to a person. The procedure for

> selection under Rule 28 in quite unambiguous terms states that while preparing a list under the criteria of seniority-cum-merit remarks are required to be given for not recommending a person for promotion being unsuitable. No such remarks are available in the record of entire selection proceedings including the minutes of Departmental Promotion Committee. The Departmental Promotion Committee was required to see the entire service record including the annual confidential reports/annual performance appraisal reports, awards/commendation certificates, entries relating to punishments or pending departmental enquiries etc. and then by analysis of the same an objective remark in relation to suitability was required to be made. The Departmental Promotion Committee should have recorded that how the misconduct for that the petitioner was penalised by a minor penalty effected his efficiency to the extent that he is not suitable to be promoted to Rajasthan Police Service. While doing so the committee must keep in mind that under the criteria of seniority-cum-merit it is the seniority that will prevail as the term "merit" under the criteria concerned means the minimum merit necessary for efficiency of administration."

In the instant matter too the Departmental Promotion Committee denied promotion to the petitioner ipse-dixit on the count that he suffered with a minor penalty.

In view of the law laid down in the case of Satyamani Tiwari (supra) it can very well be said that candidature of the petitioner was not objectively considered for promotion to the post of Naib Tehsildar.

Accordingly, this petition for writ is allowed. The respondents are directed to consider candidature of the petitioner afresh for the purpose of promotion to the post of Naib Tehsildar from the date the persons junior to him were promoted. While considering candidature of the petitioner the Departmental Promotion Committee shall keep in mind the observations made hereinabove with regard to process of consideration for promotion under the criteria of seniority-cum-merit.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.